

Before the  
Federal Communications Commission  
Washington, D.C. 20554

MM Docket No. 93-207

In the Matter of

Amendment of Section 76.51  
of the Commission's Rules  
to Include Riverside,  
California, in the Los Angeles-  
San Bernardino-Corona-Fontana,  
California, Television Market

**REPORT & ORDER**  
(Proceeding Terminated)

Adopted: November 29, 1993; Released: December 7, 1993

By the Chief, Mass Media Bureau:

1. Before the Commission is the *Notice of Proposed Rule Making* in MM Docket No. 93-207, 8 FCC Rcd 4783 (1993) ("*Notice*"), issued in response to a petition filed by Fouce Amusement Enterprises, Inc. ("*Fouce*"), licensee of television station KRCA(TV), Channel 62 (Independent), Riverside, California, to amend Section 76.51 of the Commission's Rules, 47 C.F.R. 76.51, to add Riverside as a designated community in the Los Angeles-San Bernardino-Corona-Fontana, California, television market.

2. In the *Notice*, we tentatively concluded that a sufficient case for redesignation of the subject market had been set forth such that the proposal should be tested through the rulemaking process. We noted that the information before us in the petitioner's request indicated that KRCA and stations licensed to communities in the subject television markets do compete for audiences and economic support throughout much of the combined market area, and that sufficient evidence had been presented tending to demonstrate commonality between the proposed community to be added to a market designation and the market as a whole. Moreover, we observed that the petitioner's proposal appeared to be consistent with the Commission's policies regarding redesignation of a hyphenated market.

3. Fouce filed comments underscoring the factors addressed in its petition, and urging the adoption of its proposed rule amendment. Comments were also filed by Community Cablevision Company ("CCC"), a California corporation doing business as Dimension Cable Services and an area cable television system operator, which opposes amendment of Section 76.51 of the Rules to include Riverside as a designated community in the market. CCC states that it has filed with the Commission a "Petition for

Emergency Special Relief" seeking to have a number of broadcast stations, including KRCA, excluded for must-carry purposes from certain communities in the Los Angeles area. In that petition, CCC argues, among other things, that Riverside is in fact a distinct community with vastly different needs and interests from other areas of the Los Angeles television market. It maintains in the instant case that including Riverside in the hyphenated Los Angeles market will "only serve to make it easier for KRCA to obtain must-carry rights in distant communities by relieving it of its obligation [under Section 76.55(c)(2) of the Commission's Rules] to indemnify cable systems of the copyright liability that would otherwise be incurred as a result of its carriage." CCC argues that expanding the must-carry rights for KRCA to areas where it offers no significant local programming and where the station would otherwise be a "distant signal" would be contrary to the concept of localism on which the must-carry rules are based. In addition, CCC alleges that cable operators in the market are already facing an "overwhelming burden" in implementing the must-carry rules due to the large number of market-area commercial and noncommercial broadcast stations that are potentially entitled to mandatory signal carriage and "the corresponding diminution of the operators' editorial discretion." In its case, CCC states that it has been forced to reduce or drop other cable programming services in order to carry less desirable programming. CCC thus maintains that "making it easier" for stations such as KRCA to obtain signal carriage rights on cable systems in the Los Angeles area is contrary to the public interest by diminishing cable operators' editorial discretion and cable subscribers' satisfaction with the programming made available on cable.

4. In reply comments, Fouce maintains that "making it easier for KRCA to obtain must-carry rights" in cable communities within the Los Angeles ADI is precisely what Congress intended by directing the Commission, in Section 614(f) of the Communications Act, as amended, 47 U.S.C. Section 614(f), to make "necessary revisions to update Section 76.51" of the Rules. It asserts that that section of the Act, as implemented through rulemakings proceedings such as this, is intended remove any copyright royalty obstacle to a station's obtaining signal carriage as other market-area stations with which it genuinely competes.<sup>1</sup>

**DISCUSSION**

5. For the reasons outlined in the *Notice*, we believe that amendment of Section 76.51 as requested by the petitioner is consistent with the procedures outlined in Section 4 of the Cable Television Consumer Protection and Competition Act of 1992,<sup>2</sup> which amended Section 614(f) of the Communications Act of 1934, and will serve the public interest by meeting the underlying purposes of the market hyphenation rule to equalize competition among stations in genuine competition. See, e.g., *Major Television Markets (Fresno-Visalia, California)*, 57 RR 2d 1122 (1985). CCC's special relief petition seeks, among other things, to exclude KRCA from mandatory carriage on certain of its Los Angeles systems, but CCC does not seek to exclude the

<sup>1</sup> Fouce also notes that CCC has already agreed to carry KRCA on its system for three years in exchange for reimbursement for any distant signal royalties incurred by CCC as a result of that carriage. Thus, it suggests that CCC's basis for opposing the

proposed amendment of Section 76.51 "appears to be moot as well as irrelevant."

<sup>2</sup> Pub. L. No. 102-385, 106 Stat. 1460 (1992).

station on systems within the ADI that are more proximate to Riverside or may have historically carried the station. Thus, while the CCC petition is directed to the must-carry status of KRCA with regard to specific communities and certain systems within the ADI, the Fouce petition is instead directed to the copyright status of the stations *if* carried by market-area systems. Amendment of Section 76.51 of the Rules as proposed in this case is, in our view, without prejudice to CCC's efforts to defeat the must-carry status of KRCA on certain specific systems within the subject ADI.<sup>3</sup> While it might be true that Riverside may be a community with distinct needs and interests from other distant communities within this large ADI, CCC's comments do not demonstrate that the action requested is inappropriate given the market as a whole. Concerns regarding the must-carry rights of specific stations on market-area cable systems in specific communities are properly addressed in petitions for special relief -- as CCC has done. However, inasmuch as CCC's comments do not materially challenge or address the tentative conclusions outlined in the *Notice*, it appears that amendment of Section 76.51 of the Rules as proposed is warranted.

6. Accordingly, pursuant to delegated authority,<sup>4</sup> IT IS ORDERED that, effective thirty (30) days after publication in the Federal Register, Section 76.51(a) of the Commission's Rules, Major Television Markets, IS AMENDED to include Riverside, California, as follows:

Los Angeles-San Bernardino-Corona-Fontana-Riverside, California

7. IT IS FURTHER ORDERED, that this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart  
Chief, Mass Media Bureau

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<sup>3</sup> In this regard, an appropriate disposition of CCC's special relief petition is proceeding on a separate track.

<sup>4</sup> See *Report and Order* in MM Docket No. 92-259, 8 FCC Rcd 2965, 2978, n.150 (1993).